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Care Initiatives, Inc. d/b/a Dubuque Nursing & Rehab Center and General Drivers and Helpers Local Union No. 421 affiliated with the International Brotherhood of Teamsters, AFL-CIO.
Case 33-CA-13076

November 15, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
LIEBMAN

Pursuant to a charge filed on August 16, 1999, the General Counsel of the National Labor Relations Board issued a complaint on September 16, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 33-RC-4373. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 21, 1999, the General Counsel filed a Motion for Summary Judgment. On October 22, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its disagreement with the Board's determination in the representation proceeding that the licensed practical nurses are employees and included in the bargaining unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's requests to bargain and for information. The Respondent admits that by let-

ters dated July 19 and August 5, 1999, the Union requested the Respondent to furnish it with the following information: a current list of all bargaining unit employees including the employee's name, address, telephone number, department, and date of hire. The Respondent's answer admits that it refused to provide this information, but denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established, however, that information concerning the terms and conditions of employment of unit employees is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436, 437 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment¹ and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation, with an office and place of business in Dubuque, Iowa, has been engaged in the business of operating a nursing home involved in long-term care.

During the past calendar year, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held February 26, 1999,² the Union was certified on July 9, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Technical, Service and Maintenance employees including non-supervisory LPN's, nursing aides, medication aides, dietary aides,

¹ The Respondent's request to dismiss the complaint is therefore denied.

² In its answer the Respondent denies that on or about February 26, 1999, pursuant to a Stipulated Election Agreement a majority of the unit selected the Union as the exclusive bargaining representative of the employees. Because the record in the underlying representation proceeding clearly shows that the election was conducted and a tally of ballots issued and because the Respondent admits the issuance of the Board's Certification of Representative, its denial of the conduct of the election is without merit.

medical secretary, and housekeeping, maintenance and laundry workers employed by the Employer at its Dubuque, Iowa facility; but excluding office clerical employees, professional employees, subcontractors, casual and on-call employees, guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

At all times since July 9, 1999, the Union has requested the Respondent to bargain, and, on July 19, and August 5, 1999, the Union requested, by letters, the Respondent to furnish information. Since August 9, 1999, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after August 9, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Care Initiatives, Inc. d/b/a Dubuque Nursing & Rehab Center, Dubuque, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with General Drivers and Helpers Local Union No. 421 affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the

exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Technical, Service and Maintenance employees including non-supervisory LPN's, nursing aides, medication aides, dietary aides, medical secretary, and housekeeping, maintenance and laundry workers employed by the Employer at its Dubuque, Iowa facility; but excluding office clerical employees, professional employees, subcontractors, casual and on-call employees, guards and supervisors as defined by the Act.

(b) Furnish the Union the information that it requested on July 19 and August 5, 1999.

(c) Within 14 days after service by the Region, post at its facility in Dubuque, Iowa, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 15, 1999

John C. Truesdale,

Chairman

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with General Drivers and Helpers Local Union No. 421 affiliated with the International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role

as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time Technical, Service and Maintenance employees including non-supervisory LPN's, nursing aides, medication aides, dietary aides, medical secretary, and housekeeping, maintenance and laundry workers employed by us at our Dubuque, Iowa facility; but excluding office clerical employees, professional employees, subcontractors, casual and on-call employees, guards and supervisors as defined by the Act.

WE WILL furnish the Union the information it requested on July 19 and August 5, 1999.

CARE INITIATIVES, D/B/A DUBUQUE NURSING & REHAB CENTER